IN THE UNITED STATES PATENT & TRADEMARK OFFICE

Appellant:	LEWONTIN	Examiner:	Goodchild, W.
Serial No.:	10/662,059	Group Art Unit:	2445
Filed:	September 12, 2003	Docket No.:	NOKM.059PA
Confirmation No.:	8337	Customer No.:	76385
Title:	SYSTEM, APPARATUS, AND METHOD FOR USING REDUCED WEB SERVICE MESSAGES		

APPELLANT'S STATEMENT IN SUPPORT OF PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Commissioner:

This Statement accompanies a Notice of Appeal that is being filed without payment of fees. As provided for in MPEP § 1207.04, Appellants are applying the previously paid fees for the Notice of Appeal filed December 18, 2008 to the filing of the accompanying Notice of Appeal. Notwithstanding, authorization is given to charge Deposit Account No. 50-3581 (NOKM.059PA) any necessary fees for this filing.

This statement is presented by Appellant in compliance with the USPTO OG Notice of 12 July 2005 entitled "New Pre-Appeal Brief Conference Pilot Program," which has been extended until further notice pursuant to the USPTO OG Notice of February 7, 2006. The Appellant is requesting a pre-appeal brief conference on the belief that the rejections of record are not proper and are based on a legal error. Thus, Appellant's request is based upon a clear legal or factual deficiency in the rejections, rather than an interpretation of the

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claims or the prior art teachings. As such, this request for pre-appeal brief review is appropriate.

If an appeal becomes necessary, there may be issues other than those presented in this statement that may be addressed that may involve an interpretation of the claims or the teachings of the prior art. However, at this time, this statement involves the impropriety of a cited reference that is used in the rejections of all rejected claims. The Appellant contends that the inclusion of this reference constitutes an appropriate basis for submitting the present statement in support of pre-appeal brief request for review.

Appellant maintains that the combination of Cheenath and Maes fails to teach or suggest at least a reduced message that is formed based on at least a variant portion of a Web service message as set forth in independent Claims 1, 13, 17, 21, 23, 27, and 30. In the Office Action mailed April 15, 2009, Cheenath is relied upon to show determining a variant portion and invariant portion of a Web service message. The Examiner recognizes at page 3 of the Office Action that Cheenath fails to disclose forming a reduced message, and thus relies upon Maes to purportedly show reducing the size of the messages taught by Cheenath.

Applicants submit that the rejections of Claims 1, 13, 17, 21, 23, 27, and 30 are improper for failing to consider all of the express claim language. As Applicants have previously noted, Cheenath provides no express teaching of determining a variant portion that changes for repeated invocations of the remote procedure call and an invariant portion that does not change for the repeated invocations of the remote procedure call. The Examiner cites paragraphs 0017 and 0021 of Cheenath to support this contention, stating that "parameters can change, data structure remains the same from the WSDL file." (Office Action, page 3). However, nowhere does Cheenath explicitly describe the determining of invariant and variant portions of an outgoing message for purposes of reducing the size of the message. Cheenath merely describes the use of a WSDL file and Java introspection to automatically construct a SOAP message, but nowhere in paragraph 0021 or elsewhere suggests which portions, if any, of the SOAP envelope, body elements, and parameters may be considered variant or invariant.

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Cheenath fails to explicitly identify invariant and variant portions of outgoing Web service messages, nor does Cheenath in view of Maes suggest using variant portions of Web services messages for forming reduced messages. Maes does not teach or suggest any recognition of variant and invariant portions of Web service messages, nor is this alleged in the Office Action. As the Examiner succinctly states, Maes "discloses reducing the size of the messages by using XML RPC or lighter weight messages. [Maes, paragraph 130]" (Office Action, page 4). Thus the combination of Cheenath with Maes merely suggests forming messages using an alternate protocol such as XML RPC, and does not teach or suggest forming reduced messages within the SOAP or XML RPC protocols.

It is unreasonable to suggest that the XML RPC messages taught in Maes are formed based on a variant portion of the SOAP messages purportedly taught in Cheenath. In particular, it should be clear that the combination of references fails to teach or suggest, for example, the claimed feature of sending a Web service message that is targeted for a second network entity to process a remote procedure call at the second network entity based on the reduced message. If the implication is that XML RPC is substituted for SOAP at both the sender and receiver, then the XML RPC message would not be reduced; it would just be a standard XML RPC message operating according to the XML RPC protocol. If instead the implication is that the XML RPC message is substituted for a SOAP message, then this could not be processed at the second network entity, which (based on the context established by the rest of the claim language) handles the SOAP protocol of the original Web service message, and not XML RPC.

Each of the pending dependent claims include all of the limitations of the respective independent claims and any intervening claims, and the arguments above are equally applicable to each of the dependent claims. Further, the rejections of dependent Claims 7-12, 15, 16 and 32-34 under 35 USC § 103(a) rely on the Cheenath/Maes combination to teach or suggest the substance of the Claims 1, 13, 21, 27, and 30 from which these claims depend. The additional reference, Sharma et. Al., fail to cure the deficiencies of Cheenath/Maes in this respect, therefore the rejection of Claims 7-12, 15, 16 and 32-34 is also in error.

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The Appellant notes that the above arguments do not present issues of claim interpretation, but rather addresses the issue of whether the Office is giving weight to limitations recited in the claims. The Appellant submits that claimed limitations are not being given the proper weight by the Office during prosecution, and discounting such claim limitations results in an error of law.

Notwithstanding other potential issues for appeal that may be outside the scope of this statement in support of pre-appeal request for review, at least the aforementioned limitations have not been properly considered. For at least these reasons, the rejections based on Cheenath are grounded in an error of law. The Appellant respectfully submits that the resulting error of law compels reversal of these rejections.

The undersigned attorney of record may be contacted at 952.854.2700 to discuss any issues related to this case.

Respectfully submitted,

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Date: July 14, 2009   By: /William B. Ashley/

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